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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Kulak, Richard
Serial Number:	10/574,653
Filed:	04/04/2006
Group Art Unit:	3654
Examiner:	Kruer, Stefan
Title:	ELEVATOR ROLLER GUIDE WITH VARIABLE STIFFNESS DAMPER

REQUEST FOR PRE-APPEAL BRIEF REVIEW

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants respectfully request Pre-Appeal Brief Review of the final rejection in the Office Action mailed on August 4, 2008, because there is no *prima facie* case of obviousness. The rejection of claims 1, 3, 5-9, 10, 12-14 and 16-22 under 35 U.S.C. §103 must be withdrawn. The Examiner's proposed combination cannot be made because it does not provide a workable result or it would require such significant redesign of the primary reference that it would entirely change the principle of operation of that reference. Additionally, the references do not teach what the Examiner contends so that even if the combination could be made, it does not provide the result suggested by the Examiner. There is no way to establish a prima facie case of obviousness based upon the Examiner's proposed combination of the *Fujita* and *Hollowell, et al.* references.

Even if the combination could be made, the result is not what the Examiner contends because the Examiner misconstrues the teachings of the *Hollowell, et al.* reference. The

Examiner suggests that the *Hollowell, et al.* reference teaches a controller that automatically increases the stiffness of a damper when an associated elevator car is at a landing. That is not what the *Hollowell, et al.* reference teaches. The position signal of column 3, line 10 in the *Hollowell, et al.* reference is used to "lock the cab to a landing" as stated in lines 11 and 12 of column 3. The way that occurs is not by increasing the stiffness of a passive damper. Instead, *Hollowell, et al.* teaches using electromagnetic actuators to force the cab platform 28 to move in a desired direction. As explained in column 4, lines 16-20, 51-55 and 60-68, the *Hollowell, et al.* reference operates the electromagnetic actuators in pairs differentially to attract the cab platform 28 toward the stem 60 of one of the rails 22. The platform 28 is moved by the actuators using a "net forward force" (line 61).

Actively moving a platform is not the same thing as changing the stiffness of a passive damper. Therefore, even if the combination could be made, the result is not what the Examiner contends and there is no *prima facie* case of obviousness.

Additionally, the proposed combination does not provide a workable result and, therefore, cannot be made. The control signals in the *Hollowell, et al.* reference are used to generate a force for moving the platform 28 as described above. The arrangement in the *Fujita* reference is not capable of generating such a force. If the control strategy of the *Hollowell, et al.* reference were introduced into the *Fujita* reference, the result is not workable. The fluid 22 in the *Fujita* reference is not capable of moving the lever 9 or the piston-shaped link 9c. Instead, it only controls how much the piston-shaped link 9c moves within the fluid 22. As already pointed out by Applicants, that only occurs during movement of the elevator car in the *Fujita* reference.

If one were to add the control strategy of the *Hollowell, et al.* reference to the device in the *Fujita* reference, nothing would happen as a result. There is no force applying capability in

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the *Fujita* embodiment that utilizes the fluid 22. Therefore, the proposed combination does not provide a workable result.

If the Examiner is proposing to redesign the *Fujita* reference to be able to apply a force as suggested in the *Hollowell, et al.* reference, that would change the principle of operation of the *Fujita* reference. In order to somehow be able to utilize the teachings of the *Hollowell, et al.* reference within the *Fujita* reference, the passive damper of *Fujita* would have to be replaced with an active force generator. Such a change would completely change the principle of operation of the *Fujita* reference. A proposed modification that changes the principle of operation of the reference is not permissible when attempting to establish a *prima facie* case of obviousness. See, e.g., MPEP 2143.01(VI).

The rejection under 35 U.S.C. §103 must be withdrawn. Applicants should not be forced to file an appeal brief in this case where the rejection will undoubtedly be reversed.

Respectfully submitted,

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Dated: October 6, 2008

CERTIFICATE OF FACSIMILE

I hereby certify that this Request for Pre-Appeal Brief Review, relative to Application Serial No. 10/574,653 is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on October 6, 2008.

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Theresa M. Palmateer

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